IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

TALUS PROPERTIES LIMITED PARTNERSHIP, PRIMA OIL & GAS COMPANY, YUMA COUNTY OIL COMPANY and JER PARTNERSHIP,	)	
Plaintiffs,	)	
vs.	)	Case No. 94-N-251
WILLIAMS NATURAL GAS COMPANY,	)	
Defendant.	)	

DEPOSITION OF ROBERT E. BERNEY, taken on behalf of the Plaintiffs, on Tuesday, the 19th day of April, 1994, pursuant to the Federal Rules of Civil Procedure, at the law offices of Conner & Winters, 2400 First National Tower, Tulsa, Oklahoma, before Frank L. Peterson, a Certified Shorthand Reporter in and for the State of Oklahoma.

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Q. If you would look at Section 22, Mr. Berney, I would like to ask you some questions about it. Do you see in the first line where it says, "Upon the expiration of the primary term"?

A. Yes, sir.

Q. What does that mean to you, "primary term"?

A. Well, I don't know what the word "primary" means. In Section 21 we set out the term of the contract was 20 years, period.

Q. Tell me, if you will, what your understanding is, then, of how Section 22 operates in this contract.

A. Well, the intent of it was at the end of the 20-year term of the contract, Cities Service Gas Company would have the option to strike a new deal. In other words, an option to strike a new deal covering any future deliveries after the expiration of the contract.

Q. So you say it was the intent of Section 22 was that at the end of the 20-year term, Cities Service would have the option to strike a new deal.

A. Yes, get together with the other parties and strike a new deal.

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Q. What is there that's confusing about it, to you?

A. First, in a separate paragraph, which is Paragraph 21, that expresses our intent, just like we put out in our Letter of Intent, this is a 20-year deal. At the end of the 20-year deal it's over unless we strike a new deal. There is no question about what the intent of the parties were, that this was a 20-year deal. We agreed upon that when they needed a piece of paper to take someplace, didn't have time to wait on the contracts, so we summarized our intent very clearly. That's what I call

a Letter of Intent or Letter of Understanding that we made with these parties before we entered into these contracts.

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Q. Is there anything in that language that is confusing or unclear to you?

A. Yes, it conflicts with the rest of the contract, Paragraph 21, which is a flat 20-year term, which was our deal with these people.

Q. Why are you confused about the sentence I just read you when you say it conflicts with Paragraph 21? We just established that 22 clearly operates after the original primary term of the contract has expired. What is the conflict?

A. The parties haven't agreed upon anything after the expiration of the 20-year term.

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Q. When it says, "If no offer is made by seller to buyer within the time above described, then the natural gas thereafter produced from the wells, leases and lands described on Exhibit A will continue to be sold to buyer under the terms and conditions of this contract." Doesn't that mean to you that at the expiration of the primary term and the seller doesn't come and make an offer, that the gas is continued to be sold and purchased under the terms and conditions of the contract?

A. Unless buyer doesn't want to purchase the gas.

Q. Where does it say that?

A. We are talking this first contract ends after 20 years. That was our deal with the Lockridge Group as set out in the Letter of Intent, as set out in the calculations, the costs of service. There is no question, taking all these agreements together, that there's something lacking in this provision. But since the term of the contract is over and you are saying the buyer has no rights or no option, I am saying he does have an option, that was the intent of the --

Q. What is missing from this paragraph, Mr. Berney, to reflect that intent you just described to me? You said something is missing from it, what is missing?

A. Obviously, what is missing is buyer's right to renegotiate the deal at the end of 20-year term if the parties want to continue the contract.